

**+INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 45-006-17-1-5-01011-18  
**Petitioner:** Frederick J. Asche, Jr.  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-35-102-020.000-006  
**Assessment Year:** 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Frederick Asche, Jr. contested the 2017 assessment of his property located at 716 N. Harvey St. in Griffith. The Lake County Property Tax Assessment Board of Appeals issued its determination valuing the property at \$160,600 (land \$26,100 and improvements \$134,500).
2. Asche filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On October 8, 2019, our designated administrative law judge, Ellen Yuhan (“ALJ”), held a hearing on Asche’s petition. Neither she nor the Board inspected the property.
3. Asche represented himself. His wife, Stefanee Asche, was also present. Hearing officers Robert Metz and Joseph E. James appeared for the Lake County Assessor. All four were sworn in as witnesses.

**Record**

4. The official record contains the following:
  - a. Petitioner Exhibit 1: Aerial map
  - Petitioner Exhibit 2: Property record card for Asche’s property, showing valuations for 2013-2017
  - Petitioner Exhibits 3-4: Property record card for Asche’s property, showing valuations for 2014-2018
  - Petitioner Exhibit 5: Property record card for 720 N. Harvey St.
  - Petitioner Exhibit 6: Property record card for 724 N. Harvey St.
  - Petitioner Exhibit 7: Property record card for 725 N. Harvey St.
  - Petitioner Exhibit 8: Property record card for 726 N. Harvey St.
  - Petitioner Exhibit 9: Listing summary for Asche’s property

Petitioner Exhibits 10-12:	Tax record for tax year 2018 pay 2019
Respondent Exhibit 1:	Property record card for Asche's property, showing valuation for 2013-2017
Respondent Exhibit 2:	Multiple Listing Service ("MLS") Residential Agent Detail Report for Asche's property
Respondent Exhibit 3:	Comparable sales analysis
Respondent Exhibit 4:	MLS reports for sales in Exhibit 3
Respondent Exhibit 5:	Spreadsheet with land assessment data for properties in Asche's assessment neighborhood

- b. The record for this matter also includes the following: (1) all petitions, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

### **Burden of Proof**

5. Generally, a taxpayer seeking review of an assessment must prove that the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances: (1) where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, and (2) where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
6. Neither circumstance applies here. Asche did not appeal his 2016 assessment, and the valuation increased by only \$100 for 2017. Asche therefore has the burden of proof.

### **Contentions**

7. Asche's case:
- a. Asche contends that his assessment should be reduced to \$150,600. For support, he points to what he believes were several errors and inaccuracies in the assessment. *S. Asche testimony.*
- b. First, the property record card includes a shed and portable spa, neither of which the property has. The shed is actually on a neighbor's property.<sup>1</sup> Second, the assessment over-valued Asche's 24-foot aboveground pool at \$2,300, while his neighbor's newer 27-foot pool was valued at only \$700. Third, Asche believes that his 15-year-old, 288-square-foot wooden deck was over-valued at \$5,600. *S. Asche testimony; Pet'r Exs. 1-4.*

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<sup>1</sup> By the time of the hearing, the shed had already been removed from the property card. *S. Asche testimony.*

- c. Asche's wife, Stefanee, explained those errors to the Calumet Township Assessor, who reduced the following year's assessment to \$135,900. That was far below what Stefanee was expecting.<sup>2</sup> If the property was only worth \$135,900 after the errors were corrected in 2018, it should not have been assessed for more than that in 2017. But the township assessor refused to reduce the 2017 assessment, telling Stefanee that she should be happy the assessment was only \$160,600, given that Asche paid more than that for the property. *S. Asche testimony.*
- d. Asche acknowledged that the property was appraised for \$169,000 when Asche bought it. But the appraiser admitted to basing 50% of his opinion on information contained in the county's property record cards. So the appraiser necessarily based his opinion at least partly on the Assessor's erroneous valuation. Asche similarly disputed the reliability of the comparable sales offered by the Assessor's witness, Joseph James. Some of those properties are on the far south side of town and therefore are not comparable to Asche's property. According to Asche, people buy houses online and overpay. *S. Asche testimony, F. Asche testimony; Pet'r Ex. 9.*
- e. In addition to the errors on the property record card, Asche took issue with the Assessor valuing his land based on its frontage rather than on its total acreage. According to Asche, platted lots are valued based on frontage. But his parcel's legal description refers to metes and bounds rather than to a plat. Either the method of assessment, or his property's legal description, should be changed. *F. Asche argument.*
- f. More importantly, land assessments in Griffith are not uniform, even for parcels on Asche's street. Some are assessed based on frontage, while others are assessed based on acreage. Asche claims that basing assessments on frontage leads to higher values. Asche's neighbor two doors down has a similarly sized parcel, which, like Asche's parcel, is described by metes and bounds. Yet her land assessment is roughly half of Asche's. *F. Asche testimony; S. Asche testimony; Pet'r Exs. 2-8.*

8. The Assessor's case:

- a. James compared the sales of eight properties on N. Harvey St., including Asche's property. The sales occurred between June 17, 2016 and August 18, 2017. Based on the unadjusted median price per square foot, James calculated a value of \$170,100 for Asche's property. The most comparable sale was the August 18, 2017 sale where Asche bought the property under appeal for \$169,000. The seller listed the property with a realtor before Asche bought it, and he paid \$3,900 less than its list price. *James testimony; Resp't Exs. 2-3.*

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<sup>2</sup> The decrease resulted from a change in the property's effective age, which, in turn, caused the amount of depreciation to increase. *Pet'r Exs. 3-4.* Because the 2018 assessment year is not before the Board, we decline to address whether the change was appropriate.

- b. In response to Asche's appeal, the Calumet Township Assessor removed the portable spa and a second wood deck and corrected the number of bathrooms from two to one and a half. Because the changes applied to later tax years, they may not appear on the property record cards introduced at the hearing. Although the Assessor lacks authority to order the township assessor to make any further changes, he will strongly suggest that she ensure the property record card is accurate. *James testimony; Resp't Ex. 1.*
- c. James prepared a spreadsheet showing the land assessments for Asche's parcel and for similarly sized parcels in Asche's neighborhood. The parcels ranged in size from .202 acres to .250 acres. The median assessment was \$2.75/sq. ft. Asche's land was assessed at \$2.65/sq. ft. This shows uniformity in land assessments. The neighbor's land assessment about which Asche complained is an outlier. The other assessments, whether based on acreage or frontage, were similar to Asche's. *James testimony; Resp't Ex. 5.*

## ANALYSIS

### A. Asche failed to make a case for reducing his assessment

9. Although he does not couch his appeal in precisely those terms, Asche raises two basic claims: (1) that the assessment valued his property too high, and (2) that his land was not assessed in a uniform and equal manner compared to other land in the area. We address each claim in turn.

#### 1. Asche failed to prove his valuation claim

##### a. Assessments are based on market value-in-use, which may be shown through market-based evidence

10. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's "true tax value." 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL 3. True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market value in use," which it in turn defines as "[t]he market value in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
11. Evidence in an assessment appeal should be consistent with that standard. For example, market-value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally

accepted appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property-tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). Normally, a party does not make a case for changing an assessment simply by showing how the DLGF's assessment guidelines should have been applied. *See Eckerling*, 841 N.E.2d at 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct."). Instead, the party must offer relevant market-based evidence. *See id.*

**b. Asche failed to offer any probative market-based evidence**

12. Asche focused mostly on errors in computing his assessment. He apparently believes that if those errors were corrected, such as by removing the component costs of a non-existent portable spa and extra bathroom fixtures, the resulting calculations would reflect his property's true tax value. But as explained above, the Tax Court has cautioned against using the DLGF's assessment guidelines to prove a property's value on appeal. Instead, Asche needed to offer relevant, market-based evidence to show his property's market value-in-use.
13. Asche offered little in that regard. At most, he pointed to the land portion of a neighboring property's assessment, arguing that it was valued at about half of what his land was assessed for. While a party may offer assessment data for comparable properties to show his property's market value-in-use, he must apply generally accepted appraisal or assessment principles in making that comparison. I.C. § 6-1.1-15-18.
14. To make his case, Asche therefore needed to compare the characteristics of the neighboring parcel to his parcel's characteristics and explain how relevant differences affected value. While he addressed the similarities in size and location between the two parcels, he did not address any other elements of comparison or explain how any relevant differences affected value. Without a more detailed comparison, the neighboring parcel's assessment does not suffice to make *prima facie* case for reducing Asche's assessment. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d at 471-72 (Ind. Tax Ct. 2005) (finding that sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value).
15. In any case, the neighbor's assessment is only one piece of data, and an outlier at that. James offered a spreadsheet for more than 60 similarly sized parcels in Asche's assessment neighborhood. Other than the outlier on which Asche relies, the parcels all were assessed for similar values (both in total and as a function of price per square foot) regardless of whether the assessments were computed based on frontage or acreage.
16. We similarly give no weight to the fact that Asche's assessment decreased between 2017 and 2018. "Each tax year stands alone for property tax assessment administrative and judicial appeals." *Garrett LLC v. Noble Cnty. Ass'r*, 112 N.E.3d 1168, 1175 (Ind. Tax Ct. 2018).

**c. The property’s sale price, which exceeded the assessment, is the most persuasive evidence of its market value-in-use**

17. Even if we were to give some weight to Asche’s evidence, the price he paid for the property (\$169,000) roughly eight months after the relevant valuation date is by far the most persuasive evidence of its value. The property was exposed to the market and the parties to the sale appear to have negotiated at arm’s length. The sale price was more than \$8,000 higher than the assessment under appeal. We therefore find that Asche’s property was not over-assessed.<sup>3</sup>

**2. Asche failed to show a lack of uniformity and equality in the rate of land assessments**

18. Finally, Asche complains about a lack of uniformity in how land in Griffith is assessed, arguing that some parcels with metes and bounds legal descriptions are assessed based on frontage while others are assessed based on acreage. As the Tax Court has explained, “the overarching goal” of Indiana’s assessment scheme is “to measure a property’s value using objectively verifiable data.” *Westfield Golf Practice Ctr. V. Wash. Twp. Ass’r*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). The Indiana Constitution therefore requires a uniform and equal rate of assessment, but it does not require uniform procedures to arrive at that rate. *Id.* (quoting *State ex. rel. Att’y Gen. v. Lake Superior Court*, 820 N.E.2d 1240, 1250 (Ind. 2005)). The taxpayer in *Westfield Golf* lost its uniformity-and-equality challenge because it focused solely on the base rate used to assess its driving range landing area compared to the rates used to assess other driving ranges, and it failed to show the actual market value-in-use for any of the properties. *Id.* at 399. Asche likewise focused on the procedures used to assess his land (price per front foot) versus the procedures used to assess other land (price per acre) rather than showing the market values-in-use for any of the properties. He therefore failed to show an actionable lack of uniformity and equality.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to Asche’s 2017 assessment.

ISSUED: January 24, 2020

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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<sup>3</sup> Even though the sale price supports a higher value, the Assessor has not asked us to raise the assessment.

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.